

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SANDISK CORPORATION,	)	
	)	
Plaintiff,	)	Case No. C 07-03618 JF
	)	
vs.	)	Honorable Jeremy Fogel
	)	
LUCENT TECHNOLOGIES INC. and	)	
ALCATEL-LUCENT, S.A.,	)	
	)	
Defendants.	)	

**DECLARATION OF ROBERT A. APPLEBY IN SUPPORT OF DEFENDANTS'  
REPLY IN SUPPORT OF MOTION TO DISMISS OR STAY**

I, Robert A. Appleby, declare as follows:

1. I am a partner in the law firm of Kirkland & Ellis LLP, counsel for defendants Lucent Technologies Inc. and Alcatel-Lucent, S.A. If called to testify as a witness, I could and would competently testify to the truth of each statement herein.

2. On November 30, 2007, this Court heard oral argument on SanDisk's Motion to Dismiss and Motion for Summary Judgment of Noninfringement.

3. During that argument the Court requested whether Lucent might consider forgoing damages for infringement of the patents-in-suit accruing during a stay, if the Court chose to stay the action.

4. The Court also asked the parties to meet and confer regarding the possibility of stipulating to a stay pending resolution of the *Microsoft* appeal.

5. On December 4, 2007, and again on December 5, 2007, counsel for the parties met and conferred as the Court requested.

6. During those conversations, Lucent offered to forgo past damages and any damages

1 accruing during a stay in return for SanDisk's stipulation to a stay pending the *Microsoft* appeal.

2 7. SanDisk refused that offer, but instead demanded that Lucent covenant not to sue  
3 SanDisk or its customers for all past and future damages for SanDisk's current digital music player  
4 products, or their natural evolutions.

5  
6 I declare under penalty of perjury under the laws of the United States that the foregoing is  
7 true and correct and that this declaration was executed on this 7th day of December 2007 at New  
8 York, New York.

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10 By: /s/ Robert A. Appleby

11 Robert A. Appleby  
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